SUPREME COURT OF THE UNITED STATES

92–5184 WAYNE EUGENE WALKER
v.
UNITED STATES

92–5188 JOE GUERRA
v.
UNITED STATES

92–5257 ROBERT WAYNE BOUVIER
v.
UNITED STATES

ON PETITIONS FOR WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

Nos. 92–5184, 92–5188 AND 92–5257. Decided November 2, 1992

The petitions for writs of certiorari are denied.

JUSTICE WHITE, with whom JUSTICE BLACKMUN joins, dissenting.

These three petitions raise a single issue: Whether the weight of waste products that are the byproduct of a drug manufacturing process and that contain a detectable amount of a controlled substance should be used for sentencing purposes under §2D1.1 of the United States Sentencing Commission Guidelines Manual (1990). The product in question was a toxic liquid substance consisting of phenylacetone and a small percentage of methamphetamine. At Joe Guerra's and Wayne Walker's trial, a chemist testified that the liquid was probably a waste product left over from the methamphetamine manufacturing process. Robert Bouvier pleaded guilty and, at his sentencing hearing, the government stipulated that over 95 percent of the weight of those liquids was solvents. Petitioners contend that their sentences should

not have been based on the total weight of the liquid. The Fifth Circuit rejected their argument. 960 F. 2d 409 (CA5 1992).

As I noted in *Fowner* v. *United States*, 504 U. S. ___ 1998 (1992) (WHITE, J., dissenting from denial of certiorari), the Courts of Appeals are in serious disagreement over this issue. Since that time, the Second, Third, and Ninth Circuits have joined the ranks of the Sixth and Eleventh Circuits in adopting the approach advocated by petitioners. See *United States* v. *Rodriguez*, Nos. 91–5455, 91–5494, and 91–5751, 1992 U. S. App. LEXIS 22744 (CA3, Sept. 18, 1992); *United States* v. *Robins*, 967 F. 2d 1387 (CA9 1992); *United States* v. *Salgado-Molina*, 967 F. 2d 27 (CA2 1992); *United States* v. *Acosta*, 963 F. 2d 551 (CA2 1992). In contrast, this case confirms the Fifth Circuit's alignment with the First and Tenth Circuits' position. See *United States* v. *Lopez-Gil*, 965 F. 2d 1124 (CA1 1992); *United States* v. *Sherrod*, 964 F. 2d 1501 (CA5 1992); *United States* v. *Dorrough*, 927 F. 2d 498 (CA10 1991).

Respondent acknowledges the existence of this split, but points to the actions of this Court as evidence that plenary consideration is unwarranted. Indeed, in the last Term alone, we have declined to review this question on three separate occasions. See *Fowner*; *Beltran-Felix* v. *United States*, 502 U. S. ___ (1992); *Mahecha-Onofre* v. *United States*, 502 U. S. ___ (1991).

I believe it is high time to resolve this enduring conflict that makes a defendant's sentence depend upon the circuit in which his or her case is tried. I therefore would grant certiorari.